



GAIL FARBER, Director

## COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

April 16, 2013

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

### ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

35 April 16, 2013

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

**COOPERATIVE AGREEMENTS BETWEEN THE  
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT AND THE  
CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER  
PACOIMA AND BIG TUJUNGA RESERVOIR SEDIMENT REMOVAL PROJECTS  
(SUPERVISORIAL DISTRICT 5)  
(3 VOTES)**

### **SUBJECT**

This action is to enter into cooperative agreements with the City of Los Angeles Department of Water and Power for both the Pacoima Reservoir Sediment Removal Project and the Big Tujunga Reservoir Sediment Removal Project. The cooperative agreements provide for the City of Los Angeles Department of Water and Power to fund \$10,000,000 of the actual costs incurred for the construction contract of each respective project, which will be administered by the Department of Public Works on behalf of the Los Angeles County Flood Control District.

### **IT IS RECOMMENDED THAT THE BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

Authorize the Chief Engineer of the Los Angeles County Flood Control District or her designee to enter into cooperative agreements with the City of Los Angeles Department of Water and Power related to funding of the Pacoima Reservoir Sediment Removal Project and the Big Tujunga Reservoir Sediment Removal Project. The City of Los Angeles Department of Water and Power will provide a total of \$20,000,000 to the Los Angeles County Flood Control District to fund \$10,000,000 for each of the two projects' construction contract costs.

## **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended action is to authorize the Chief Engineer of the Los Angeles County Flood Control District (LACFCD) or her designee to enter into two cooperative agreements (Agreements) with the City of Los Angeles Department of Water and Power (DWP). This will result in funding from DWP of \$20,000,000 to offset the construction contract costs for the Pacoima and Big Tujunga Reservoir Sediment Removal Projects (Projects) to remove sediment from the reservoirs and restore capacities for enhanced flood control and water conservation.

## **Implementation of Strategic Plan Goals**

The Countywide Strategic Plan directs the provisions of Fiscal Sustainability (Goal 2) and Integrated Services Delivery (Goal 3). This action is consistent with these goals as it will augment LACFCD's funding sources and will maintain a collaborative partnership with a local agency to restore reservoir capacity for enhanced flood control and water conservation for residents of the County of Los Angeles.

## **FISCAL IMPACT/FINANCING**

There will be no impact to the County General Fund.

The estimated construction contract costs of the Projects are currently \$85,000,000 and \$33,000,000, respectively. DWP will provide \$10,000,000 to LACFCD for each Project's construction contract costs for a total contribution of \$20,000,000. LACFCD will fund the balance of the Projects' costs.

Each Project will take approximately five years to complete and LACFCD will fund the Projects over a period of five fiscal years. Appropriations will be included in the Flood Control District Fund Budget beginning in the Recommended Fiscal Year 2013-14.

## **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

LACFCD has an ongoing interest and commitment to partner with local agencies to maximize water conservation and groundwater recharge benefits. DWP is a proprietary department of the City of Los Angeles (City) and a municipal utility that provides water and electric services to residents, businesses, and industries in the City. The City possesses the right to the native groundwater of the San Fernando Groundwater Basin. DWP has historically utilized local groundwater supply to support approximately 12 percent of the City's total water demand. The Pacoima and Big Tujunga Dams release water that recharges the San Fernando Groundwater Basin. LACFCD owns and operates the Pacoima and Big Tujunga Dams.

LACFCD proposes to remove excess sediment from the Pacoima and Big Tujunga Reservoirs. The Projects will provide for greater flood control capacity and increased groundwater recharge within the San Fernando Groundwater Basin.

LACFCD will complete design plans and specifications; schedule construction of each Project; and be responsible for environmental documentation, permitting, administration, and project management. The Department of Public Works will return to the Board for each Project's approval.

DWP will provide \$10,000,000 to LACFCD for each Project's construction contract costs. The Agreements will be substantially similar in form and content to the enclosed agreements, which will be approved as to form by County Counsel prior to execution by the Chief Engineer or her designee.

### **ENVIRONMENTAL DOCUMENTATION**

In accordance with Section 15378(b)(4) of the California Environmental Quality Act (CEQA) guidelines, approval of the recommended action does not constitute a project, and hence, is not subject to the requirements of CEQA. This proposed action would create a government funding mechanism that does not involve a commitment to a specific project, which may result in a potentially significant impact on the environment.

LACFCD will act as the lead agency for compliance with CEQA and will return to the Board for consideration of the appropriate environmental documentation and each Project's approval prior to undertaking any activities that constitute a project. Under the terms of the Agreements, LACFCD may terminate either Project in its sole discretion, including if environmental review of either Project discloses that the Project or a portion thereof will have significant environmental impacts that cannot be mitigated.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The approval to enter into the Agreements will offset the costs of projects that ultimately enhance flood control and groundwater recharge in the San Fernando Groundwater Basin and increases the local water supply for residents of the County of Los Angeles.

**CONCLUSION**

Please return one adopted copy of this letter to the Department of Public Works, Water Resources Division.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER

Director

GF:CS:yg

Enclosures

c: Chief Executive Office (Rita Robinson)  
County Counsel  
Executive Office

**COOPERATIVE AGREEMENT NO. XXXXX BETWEEN THE LOS ANGELES  
COUNTY FLOOD CONTROL DISTRICT AND THE LOS ANGELES  
DEPARTMENT OF WATER AND POWER REGARDING  
PACOIMA RESERVOIR SEDIMENT REMOVAL PROJECT**

**AGREEMENT**

This Cooperative Agreement No. XXXXX (hereinafter referred to as AGREEMENT) is made and entered into by and between the Los Angeles County Flood Control District (hereinafter referred to as DISTRICT), and the City of Los Angeles Department of Water and Power (hereinafter referred to as LADWP) collectively referred to as Parties.

**WITNESSETH**

WHEREAS, the City of Los Angeles (hereinafter referred to as CITY) is home to approximately 4 million residents who depend on reliable sources of water; and

WHEREAS, 88 percent of the water supply to the CITY is imported from sources outside of the region; and

WHEREAS, in addition to imported water, the local water supply is a reliable source of water that depends on groundwater recharged from a variety of sources, including stormwater; and

WHEREAS, local groundwater supply is a key resource that LADWP has historically utilized to support approximately 12 percent of the CITY'S total water demand; and

WHEREAS, capturing additional stormwater to augment groundwater recharge is vital to sustain the long-term reliability of the CITY'S local groundwater supply; and

WHEREAS, the CITY'S water rights in five local groundwater basins are adjudicated, with the San Fernando Groundwater Basin (hereinafter referred to as BASIN) being the largest of the five basins; and

WHEREAS, the CITY possesses the right to the surface waters of the Los Angeles River and the native groundwater of the BASIN in accordance with the California Supreme Court case of *The City of Los Angeles vs. City of San Fernando*, et al., (1975) 14 Cal. 3d 199 and of the Judgment *The City of Los Angeles vs. City of San Fernando*, et al., Los Angeles Superior Court Case No.650079, (January 26, 1979); and

WHEREAS, the CITY is a beneficiary of stormwater capture and recharge that may improve the condition of the BASIN and potentially increase the long-term native safe yield to augment the CITY'S local water supply; and

WHEREAS, LADWP and the DISTRICT are committed to pursuing opportunities to enhance stormwater capture and groundwater recharge that may improve the condition of the BASIN and potentially increase the long-term native safe yield to augment the CITY'S local water supply; and

WHEREAS, the DISTRICT is a special district organized and operating under the provisions of the Los Angeles County Flood Control Act; and

WHEREAS, the County of Los Angeles Department of Public Works manages and operates the Pacoima Dam on behalf of the DISTRICT; and

WHEREAS, pursuant to the Los Angeles County Flood Control Act, the DISTRICT owns and manages flood control and water conservation facilities in the County of Los Angeles (hereinafter referred to as COUNTY), and said efforts result in the capture of stormwater used to replenish groundwater basins in the COUNTY, including the BASIN; and

WHEREAS, the DISTRICT owns and operates the Pacoima Dam to provide flood control and water conservation; and

WHEREAS, the DISTRICT impounds water behind Pacoima Dam, in the Pacoima Reservoir during storm season and gradually releases the stormwater to the Lopez and Pacoima Spreading grounds to recharge the BASIN; and

WHEREAS, recent fires upstream of Pacoima Dam and Reservoir, including the Marek, Sayre, and Station fires burned approximately 80 percent of the tributary watershed and contributed to sediment accumulation in the Pacoima Reservoir during subsequent storm events thereby reducing stormwater storage capacity; and

WHEREAS, the DISTRICT has developed the Pacoima Reservoir Sediment Removal Project (hereinafter referred to as PROJECT) to remove up to 5.2 million cubic yards of accumulated sediment and restore the reservoir's capacity up to 6,060 acre-feet for continued flood control and stormwater capture; and

WHEREAS, the DISTRICT currently estimates the cost of the PROJECT to be up to \$85 million; and

WHEREAS, LADWP agrees to provide \$10 million to the DISTRICT for the PROJECT'S construction cost.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Parties, it is hereby agreed as follows:

(1) DISTRICT AGREES:

- a. To develop one hundred percent design plans and specifications for the PROJECT.
- b. To advertise the PROJECT for construction bids, to award and administer the construction contract, to cause the PROJECT to be constructed in accordance with the said plans and specifications.
- c. To use LADWP funds solely for activities performed by the DISTRICT and its contractors and subcontractors for the PROJECT.
- d. To make changes or modifications to the plans and specifications for the PROJECT as necessitated by unforeseen or unforeseeable conditions encountered during final design and/or construction and to consult with LADWP on any fundamental design changes.
- e. To provide progress report updates to LADWP through the completion of the PROJECT, and to provide reasonable notice to LADWP to participate in PROJECT meetings.
- f. Upon approval of the AGREEMENT by both Parties, to prepare and send an invoice to LADWP for \$10 million after execution of the AGREEMENT.
- g. To fund the design and/or construction contract and/or construction management and/or construction contingency cost(s) of the PROJECT in excess of LADWP maximum contribution, as described in Section (2), paragraphs a and b, below. LADWP shall not be obligated to provide additional funding towards the completion of the PROJECT as called for in this AGREEMENT.
- h. To submit a reimbursement(s) to LADWP of any unused LADWP funds within 90 calendar days after PROJECT completion or expiration/termination of this AGREEMENT as described in Section (3), paragraph a and e, below.
- i. To use generally acceptable accounting practices applicable to public agencies to account for, transfer, and reimburse funds deposited for the PROJECT.
- j. The DISTRICT, on behalf of itself and any and all of its contracted design engineering, geotechnical firms, and construction contractors, agrees to indemnify, defend, and hold harmless LADWP and its board, officers, agents, and employees from and against any claims, demands, liability, damages,

costs and expenses, including, without limitation, attorney fees and costs of litigation and claims involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, including any environmental damage or harm, or which arise out of any act or omission or willful misconduct of the DISTRICT or its board, officers, agents, employees, or which arise out of any act, error, omission or willful misconduct caused or alleged to be caused by any of the DISTRICT'S contractors or subcontractors of any tier in any way relating to this AGREEMENT. The provisions of this section shall survive expiration or termination of this AGREEMENT. This indemnification shall apply except in the event of a claim or demand arising from the sole negligence or willful misconduct of LADWP, its board, officers, agents, or employees.

(2) LADWP AGREES:

- a. To fund \$10 million of the PROJECT'S actual construction cost.
- b. To deposit \$10 million within 60 days of receipt of the invoice as described in Section (1) paragraph f, above.
- c. To provide reasonable notice to DISTRICT of its request to participate in PROJECT meetings; however, the DISTRICT'S determinations regarding the PROJECT will be final.
- d. The Contract Administrator for LADWP shall be the Director of Water Resources, or his designee.
- e. To indemnify, defend, and hold DISTRICT and its respective officers, employees, and agents harmless from and against any claims, demands, liability, damages, costs and expenses, including without limitation, involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, arising out of any act, error, omission, or willful misconduct in performance of LADWP'S obligations under this AGREEMENT. The provisions of this section shall survive expiration or termination of this AGREEMENT. This indemnification shall apply except in the event of a claim or demand arising from the sole negligence or willful misconduct of the DISTRICT, its board, officers, agents, or employees.

(3) IT IS MUTUALLY UNDERSTOOD AND AGREED:

- a. This AGREEMENT may be executed in separate parts by the Parties. The AGREEMENT shall be effective upon the date of the last executed signature and will expire by its own operation five years after the



construction contract is awarded, unless extended or sooner terminated by mutual written agreement by all Parties. All work described in Section (1), paragraphs a, b, c, d, e, f, g, and h, above, shall be completed by the expiration of this AGREEMENT.

- b. The DISTRICT shall have the right to reject all bids after notifying LADWP and may re-advertise the PROJECT if the DISTRICT deems such action is to be in the best interests of the DISTRICT.
- c. Each party shall have no financial obligation to the other party under this AGREEMENT, except as herein expressly provided.
- d. This AGREEMENT may be modified only by mutual written consent of DISTRICT and LADWP. Amendments and modifications of a nonmaterial nature may be made by the mutual written consent of the Parties' Directors or their delegates.
- e. Notwithstanding any other provision of this AGREEMENT, DISTRICT may terminate this AGREEMENT as to the PROJECT if it determines, in its sole discretion, not to proceed with the PROJECT, including but not limited to, if the environmental review under the California Environmental Quality Act discloses that the PROJECT or a portion thereof will have significant environmental impacts that cannot be feasibly mitigated. In the event that DISTRICT terminates this AGREEMENT as to the PROJECT, pursuant to this paragraph, or if DISTRICT fails to complete the PROJECT in accordance with this AGREEMENT, the DISTRICT shall return any unused funds for the PROJECT previously deposited by LADWP pursuant to this AGREEMENT, if any. The DISTRICT shall also return an accounting of the funds applied to the PROJECT with a copy of any completed or work-in-progress design documents and shall have no further obligation or liability to LADWP or CITY for any act, error, omission, or willful misconduct in performance of this AGREEMENT as to the PROJECT.

#### (4) RIGHT TO AUDIT

The DISTRICT shall maintain, and shall cause the DISTRICT'S consultants and/or suppliers as applicable to maintain all records pertaining to the management of this AGREEMENT and, related subcontracts, and performance of services pursuant to this AGREEMENT, in their original form, including but not limited to, reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred and services performed pursuant to this AGREEMENT. If the DISTRICT, the

DISTRICT'S consultants and/or suppliers are required to submit cost or pricing data in connection with this AGREEMENT, the DISTRICT shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. All records shall be retained, and shall be subject to examination and audit by LADWP personnel or by LADWP'S agents (herein after Authorized Auditors), for a period of not less than five (5) years following payment made by LADWP hereunder or the expiration date of this AGREEMENT, whichever is later.

The DISTRICT shall make said records or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at the DISTRICT'S offices at all reasonable times and without charge. The Authorized Auditors will have the right to reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by the DISTRICT on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The DISTRICT shall not, however, be required to furnish the Authorized Auditors with commonly available software.

The DISTRICT, and the DISTRICT'S contractors, consultants and/or suppliers, as applicable to the services provided under this AGREEMENT, shall be subject at any time within 60 calendar days, prior written notice to audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all AGREEMENT requirements relative to practices, methods, procedures, performance, compensation, and documentation.

Examinations and audits will be performed using generally accepted auditing practices and principles and applicable City, County, State and Federal government audit standards. For consultants, subconsultants, and suppliers that utilize or are subject to Federal Acquisition Regulation (FAR), Parts 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits will utilize such information.

To the extent that the Authorized Auditors examination or audit reveals inaccurate, incomplete or noncurrent records, or records are unavailable, the records shall be considered defective.

Consistent with standard auditing procedures, the DISTRICT will be provided sixty (60) calendar days to review the Authorized Auditors examination results or audit and respond to LADWP prior to the examination's or audit's finalization and public release.

The DISTRICT shall contractually require all contractors, consultants and suppliers performing services under this AGREEMENT to comply with the provisions of this section by inserting this provision PSC-22 in each contractor contract and by contractually requiring each subcontractor to insert this provision

PSC-22 in any of its subcontractor contracts related to services under this AGREEMENT. In addition, the DISTRICT, their contractors, consultants and/or suppliers, shall also include the following language in each contract:

“LADWP is a third party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of LADWP. The designation of LADWP as a third party beneficiary of the audit provision shall not confer any rights or privileges on the DISTRICT, contractors, consultants or any other person/entity.”

The provisions of this section shall survive expiration or termination of this Agreement.

(5) NOTICES

All notices provided under this AGREEMENT must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either: (1) personally delivered to the address indicated below; or (2) on the third business day following deposit, postage prepaid, using certified mail, return receipt requested, in any United States Postal mailbox or at any United States Post Office; or (3) on the date of transmission by facsimile to the number provided below. All notices, demands, or requests shall be addressed to the following:

LADWP: Mr. David R. Pettijohn  
Director of Water Resources  
Los Angeles Department of Water and Power  
111 North Hope Street, Room 1460  
Los Angeles, CA 90012  
Phone: (213) 367-0899

DISTRICT: Mr. Christopher Stone  
Assistant Deputy Director  
County of Los Angeles  
Department of Public Works  
Water Resources Division  
P.O. Box 1460  
Alhambra, CA 91802-1460  
Phone: (626) 979-5309

(6) COMPLETE AGREEMENT

This AGREEMENT contains the full and complete AGREEMENT between the DISTRICT and LADWP. No verbal agreement or conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this AGREEMENT.

IN WITNESS WHEREOF, each party hereto has caused this AGREEMENT to be executed by their respective officers, duly authorized, by the LADWP on \_\_\_\_\_, 2013, and by the DISTRICT on \_\_\_\_\_, 2013.

LOS ANGELES COUNTY  
FLOOD CONTROL DISTRICT,  
A body corporate and politic

By \_\_\_\_\_  
Chief Engineer

APPROVED AS TO FORM:

JOHN F. KRATTLI  
County Counsel

By \_\_\_\_\_  
Deputy

DEPARTMENT OF WATER AND  
POWER OF THE CITY OF  
LOS ANGELES

By \_\_\_\_\_  
Ronald O. Nichols  
General Manager

By \_\_\_\_\_  
Barbara E. Moschos  
Secretary

**COOPERATIVE AGREEMENT NO. XXXXX BETWEEN THE LOS ANGELES  
COUNTY FLOOD CONTROL DISTRICT AND THE LOS ANGELES  
DEPARTMENT OF WATER AND POWER REGARDING  
BIG TUJUNGA RESERVOIR SEDIMENT REMOVAL PROJECT**

**AGREEMENT**

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**WITNESSETH**

WHEREAS, the CITY of Los Angeles (hereinafter referred to as CITY) is home to approximately 4 million residents who depend on reliable sources of water; and

WHEREAS, 88 percent of the water supply to the CITY is imported from sources outside of the region; and

WHEREAS, in addition to imported water, the local water supply is a reliable source of water that depends on groundwater recharged from a variety of sources, including stormwater; and

WHEREAS, local groundwater supply is a key resource that LADWP has historically utilized to support approximately 12 percent of the CITY'S total water demand; and

WHEREAS, capturing additional stormwater to augment groundwater recharge is vital to sustain the long-term reliability of the CITY'S local groundwater supply; and

WHEREAS, the CITY'S water rights in five local groundwater basins are adjudicated, with the San Fernando Groundwater Basin (hereinafter referred to as BASIN) being the largest of the five basins; and

WHEREAS, the CITY possesses the right to the surface waters of the Los Angeles River and the native groundwater of the BASIN in accordance with the California Supreme Court case of *The City of Los Angeles vs. City of San Fernando*, et al., (1975) 14 Cal. 3d 199 and of the Judgment *The City of Los Angeles vs. City of San Fernando*, et al., Los Angeles Superior Court Case No.650079, (January 26, 1979); and

WHEREAS, the CITY is a beneficiary of stormwater capture and recharge that may improve the condition of the BASIN and potentially increase the long-term native safe yield to augment the CITY'S local water supply; and

WHEREAS, LADWP and the DISTRICT are committed to pursuing opportunities to enhance stormwater capture and groundwater recharge that may improve the condition of the BASIN and potentially increase the long-term native safe yield to augment the CITY's local water supply; and

WHEREAS, the DISTRICT is a special district organized and operating under the provisions of the Los Angeles County Flood Control Act; and

WHEREAS, the County of Los Angeles Department of Public Works manages and operates the Big Tujunga Dam on behalf of the DISTRICT; and

WHEREAS, pursuant to the Los Angeles County Flood Control Act, the DISTRICT owns and manages flood control and water conservation facilities in the County of Los Angeles (hereinafter referred to as COUNTY), and said efforts result in the capture of stormwater used to replenish groundwater basins in the COUNTY, including the BASIN; and

WHEREAS, the DISTRICT owns and operates the Big Tujunga Dam to provide flood control and water conservation; and

WHEREAS, the DISTRICT impounds water behind Big Tujunga Dam, in the Big Tujunga Reservoir during storm season and gradually releases the stormwater to the Hansen and Tujunga Spreading grounds to recharge the BASIN; and

WHEREAS, the Station Fire burned approximately 87 percent of the watershed tributary to the Big Tujunga Dam and Reservoir, increasing sediment deposition in the Big Tujunga Reservoir during subsequent storm events; and

WHEREAS, the DISTRICT has developed the Big Tujunga Reservoir Sediment Removal Project (hereinafter referred to as PROJECT) to remove up to 4.4 million cubic yards of accumulated sediment and restore the reservoir's capacity up to 6,240 acre-feet for continued flood control and stormwater capture; and

WHEREAS, the DISTRICT currently estimates the cost of the PROJECT to be up to \$33 million; and

WHEREAS, LADWP agrees to provide \$10 million to the DISTRICT for the PROJECT'S construction cost.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Parties, it is hereby agreed as follows:

(1) DISTRICT AGREES:

- a. To develop one hundred percent design plans and specifications for the PROJECT.
- b. To advertise the PROJECT for construction bids, to award and administer the construction contract, to cause the PROJECT to be constructed in accordance with the said plans and specifications.
- c. To use LADWP funds solely for activities performed by the DISTRICT and its contractors and subcontractors for the PROJECT.
- d. To make changes or modifications to the plans and specifications for the PROJECT as necessitated by unforeseen or unforeseeable conditions encountered during final design and/or construction and to consult with LADWP on any fundamental design changes.
- e. To provide progress report updates to LADWP through the completion of the PROJECT, and to provide reasonable notice to LADWP to participate in PROJECT's meetings.
- f. Upon approval of the AGREEMENT by both Parties, to prepare and send an invoice to LADWP for \$10 million after execution of the AGREEMENT.
- g. To fund the design and/or construction contract and/or construction management and/or construction contingency cost(s) of the PROJECT in excess of LADWP maximum contribution, as described in Section (2), paragraphs a and b, below. LADWP shall not be obligated to provide additional funding towards the completion of the PROJECT as called for in this AGREEMENT.
- h. To submit a reimbursement(s) to LADWP of any unused LADWP funds within 90 calendar days after PROJECT completion or expiration/termination of this AGREEMENT as described in Section (3), paragraph a and e, below.
- i. To use generally acceptable accounting practices applicable to public agencies to account for, transfer, and reimburse funds deposited for the PROJECT.
- j. The DISTRICT, on behalf of itself and any and all of its contracted design engineering, geotechnical firms, and construction contractors, agrees to indemnify, defend, and hold harmless LADWP and its board, officers, agents, and employees from and against any claims, demands, liability, damages, costs and expenses, including, without limitation, attorney fees and costs of

litigation and claims involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, including any environmental damage or harm, or which arise out of any act or omission or willful misconduct of the DISTRICT or its board, officers, agents, employees, or which arise out of any act, error, omission or willful misconduct caused or alleged to be caused by any of the DISTRICT'S contractors or subcontractors of any tier in any way relating to this AGREEMENT. The provisions of this section shall survive expiration or termination of this AGREEMENT. This indemnification shall apply except in the event of a claim or demand arising from the sole negligence or willful misconduct of LADWP, its board, officers, agents, or employees.

(2) LADWP AGREES:

- a. To fund \$10 million of the PROJECT'S actual construction cost.
- b. To deposit \$10 million within 60 days of receipt of the invoice as described in Section (1) paragraph f, above.
- c. To provide reasonable notice to DISTRICT of its request to participate in PROJECT meetings; however, the DISTRICT'S determinations regarding the PROJECT will be final.
- d. The Contract Administrator for LADWP shall be the Director of Water Resources, or his designee.
- e. To indemnify, defend, and hold DISTRICT and its respective officers, employees, and agents harmless from and against any claims, demands, liability, damages, costs and expenses, including without limitation, involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, arising out of any act, error, omission, or willful misconduct in performance of LADWP's obligations under this AGREEMENT. The provisions of this section shall survive expiration or termination of this AGREEMENT. This indemnification shall apply except in the event of a claim or demand arising from the sole negligence or willful misconduct of the DISTRICT, its board, officers, agents, or employees.

(3) IT IS MUTUALLY UNDERSTOOD AND AGREED:

- a. This AGREEMENT may be executed in separate parts by the Parties. The AGREEMENT shall be effective upon the date of the last executed signature and will expire by its own operation five years after the construction contract is awarded, unless extended or sooner terminated by mutual written agreement by all Parties. All work described in Section (1), paragraphs a, b, c, d, e, f, g, and h, above, shall be completed by the expiration of this AGREEMENT.



- b. The DISTRICT shall have the right to reject all bids after notifying LADWP and may re-advertise the PROJECT if the DISTRICT deems such action is to be in the best interests of the DISTRICT.
- c. Each party shall have no financial obligation to the other party under this AGREEMENT, except as herein expressly provided.
- d. This AGREEMENT may be modified only by mutual written consent of DISTRICT and LADWP. Amendments and modifications of a nonmaterial nature may be made by the mutual written consent of the Parties' Directors or their delegates.
- e. Notwithstanding any other provision of this AGREEMENT, DISTRICT may terminate this AGREEMENT as to the PROJECT if it determines, in its sole discretion, not to proceed with the PROJECT, including but not limited to, if the environmental review under the California Environmental Quality Act discloses that the PROJECT or a portion thereof will have significant environmental impacts that cannot be feasibly mitigated. In the event that DISTRICT terminates this AGREEMENT as to the PROJECT, pursuant to this paragraph, or if DISTRICT fails to complete the PROJECT in accordance with this AGREEMENT, the DISTRICT shall return any unused funds for the PROJECT previously deposited by LADWP pursuant to this AGREEMENT, if any. The DISTRICT shall also return an accounting of the funds applied to the PROJECT with a copy of any completed or work-in-progress design documents and shall have no further obligation or liability to LADWP or CITY for any act, error, omission, or willful misconduct in performance of this AGREEMENT, as to the PROJECT.

(4) RIGHT TO AUDIT

The DISTRICT shall maintain, and shall cause the DISTRICT'S consultants and/or suppliers as applicable to maintain all records pertaining to the management of this AGREEMENT and, related subcontracts, and performance of services pursuant to this AGREEMENT, in their original form, including but not limited to, reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred and services performed pursuant to this AGREEMENT. If the DISTRICT, the DISTRICT'S consultants and/or suppliers are required to submit cost or pricing data in connection with this AGREEMENT, the DISTRICT shall maintain all records and documents necessary to permit adequate evaluation of the cost or

pricing data submitted, along with the computations and projections used. All records shall be retained, and shall be subject to examination and audit by LADWP personnel or by LADWP'S agents (herein after Authorized Auditors), for a period of not less than five (5) years following payment made by LADWP hereunder or the expiration date of this AGREEMENT, whichever is later.

The DISTRICT shall make said records or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at the DISTRICT'S offices at all reasonable times and without charge. The Authorized Auditors will have the right to reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by the DISTRICT on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The DISTRICT shall not, however, be required to furnish the Authorized Auditors with commonly available software.

The DISTRICT, and the DISTRICT'S contractors, consultants and/or suppliers, as applicable to the services provided under this AGREEMENT, shall be subject at any time within 60 calendar days, prior written notice to audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all AGREEMENT requirements relative to practices, methods, procedures, performance, compensation, and documentation.

Examinations and audits will be performed using generally accepted auditing practices and principles and applicable City, County, State and Federal government audit standards. For consultants, subconsultants, and suppliers that utilize or are subject to Federal Acquisition Regulation (FAR), Parts 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits will utilize such information.

To the extent that the Authorized Auditors examination or audit reveals inaccurate, incomplete or noncurrent records, or records are unavailable, the records shall be considered defective.

Consistent with standard auditing procedures, the DISTRICT will be provided sixty (60) calendar days to review the Authorized Auditors examination results or audit and respond to LADWP prior to the examination's or audit's finalization and public release.

The DISTRICT shall contractually require all contractors, consultants and suppliers performing services under this AGREEMENT to comply with the provisions of this section by inserting this provision PSC-22 in each contractor

contract and by contractually requiring each subcontractor to insert this provision PSC-22 in any of its subcontractor contracts related to services under this AGREEMENT. In addition, the DISTRICT, their contractors, consultants and/or suppliers, shall also include the following language in each contract:

“LADWP is a third party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of LADWP. The designation of LADWP as a third party beneficiary of the audit provision shall not confer any rights or privileges on the DISTRICT, contractors, consultants or any other person/entity.”

The provisions of this section shall survive expiration or termination of this AGREEMENT.

(5) NOTICES

All notices provided under this AGREEMENT must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either: (1) personally delivered to the address indicated below; or (2) on the third business day following deposit, postage prepaid, using certified mail, return receipt requested, in any United States Postal mailbox or at any United States Post Office; or (3) on the date of transmission by facsimile to the number provided below. All notices, demands, or requests shall be addressed to the following:

LADWP: Mr. David R. Pettijohn  
Director of Water Resources  
Los Angeles Department of Water and Power  
111 North Hope Street, Room 1460  
Los Angeles, CA 90012  
Phone: (213) 367-0899

DISTRICT: Mr. Christopher Stone  
Assistant Deputy Director  
County of Los Angeles  
Department of Public Works  
Water Resources Division  
P.O. Box 1460  
Alhambra, CA 91802-1460  
Phone: (626) 979-5309

(6) COMPLETE AGREEMENT

This AGREEMENT contains the full and complete AGREEMENT between the DISTRICT and LADWP. No verbal agreement or conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this AGREEMENT.

IN WITNESS WHEREOF, each party hereto has caused this AGREEMENT to be executed by their respective officers, duly authorized, by the LADWP on \_\_\_\_\_, 2013, and by the DISTRICT on \_\_\_\_\_, 2013.

LOS ANGELES COUNTY  
FLOOD CONTROL DISTRICT,  
A body corporate and politic

By \_\_\_\_\_  
Chief Engineer

APPROVED AS TO FORM:

JOHN F. KRATTLI  
County Counsel

By \_\_\_\_\_  
Deputy

DEPARTMENT OF WATER AND  
POWER OF THE CITY OF  
LOS ANGELES

By \_\_\_\_\_  
Ronald O. Nichols  
General Manager

By \_\_\_\_\_  
Barbara E. Moschos  
Secretary